

PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE

Rule 30

APPENDIX TO THE BRIEFS

(a) Duty of Appellant to Prepare and File: Content of Appendix; Time for Filing; Number of Copies. The appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, charge, findings or opinion; (3) the judgment, order or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. The fact that parts of the record are not included in the appendix shall not prevent the parties or the court from relying on such parts.

Unless filing is to be deferred pursuant to the provisions of subdivision (c) of this rule, the appellant shall serve and file the appendix ~~within 40 days of the date on which the~~ record is filed with his brief. Ten copies of the appendix shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented, unless the court shall by rule or order direct the filing or service of a lesser number.

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(c) Alternative Method of Designating Contents of the Appendix; How References to the Record may be Made in the Briefs When Alternative Method is Used. If ~~the appellant shall so~~

~~elect, or~~ if the court shall so provide by rule for classes of cases or by order in specific cases, preparation of the appendix may be deferred until after the briefs have been filed, and the appendix may be filed 21 days after service of the brief of the appellee. Notice of the election by the appellant to defer preparation of the appendix shall be filed and served by him within 10 days after the date on which the record is filed. If the preparation and filing of the appendix is thus deferred, the provisions of subdivision (b) of this Rule 30 shall apply, except that the designations referred to therein shall be made by each party at the time his brief is served, and a statement of the issues presented shall be unnecessary.

Committee Note

Subdivision (a). The amendment of subdivision (a) is related to the amendment of Rule 31(a), which authorizes a court of appeals to shorten the time for filing briefs. By virtue of this amendment, if the time for filing the brief of the appellant is shortened the time for filing the appendix is likewise shortened.

Subdivision (c). As originally written, subdivision (c) permitted the appellant to elect to defer filing of the appendix until 21 days after service of the brief of the appellee. As amended, subdivision (c) requires that an order of court be obtained before filing of the appendix can be deferred, unless a court permits deferred filing by local rule. The amendment should not cause use of the deferred appendix to be viewed with disfavor. In cases involving lengthy records, permission to defer filing of

the appendix should be freely granted as an inducement to the parties to include in the appendix only matter that the briefs show to be necessary for consideration by the judges. But the Committee is advised that appellants have elected to defer filing of the appendix in cases involving brief records merely to obtain the 21 day delay. The subdivision is amended to prevent that practice.

Rule 31

FILING AND SERVICE OF BRIEFS

(a) Time for Serving and Filing Briefs. The appellant shall serve and file his brief within 40 days after the date on which the record is filed. The appellee shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. If its calendar permits the hearing of argument promptly after briefs are filed, a court of appeals may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for classes of cases or by order for specific cases.

Committee Note

The time prescribed by Rule 31(a) for preparing briefs-- 40 days to the appellant, 30 days to the appellee--is well within

the time that must ordinarily elapse in most circuits before an appeal can be reached for hearing. In those circuits, the time prescribed by the Rule should not be disturbed. But if a court of appeals maintains a current calendar, that is, if an appeal can be heard as soon as the briefs have been filed, the court should be free to prescribe shorter periods in the interest of expediting decision.